Supreme Court, U. S.
FILED
MAY 15 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1631

DEMOCRATIC PARTY OF THE
UNITED STATES OF AMERICA and
DEMOCRATIC NATIONAL COMMITTEE,
Appellants,

vs.

STATE OF WISCONSIN ex rel.
BRONSON C. LA FOLLETTE
and DEMOCRATIC PARTY OF WISCONSIN,
Appellees.

ON APPEAL FROM THE
SUPREME COURT OF WISCONSIN

MOTION TO DISMISS OR AFFIRM

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vs.

STATE OF WISCONSIN ex rel.
BRONSON C. LA FOLLETTE
and DEMOCRATIC PARTY OF WISCONSIN,
Appellees.

MOTION TO DISMISS OR AFFIRM

The appellee State of Wisconsin moves the Court to dismiss the appeal or, in the alternative, to affirm the judgment of the Supreme Court of Wisconsin on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

JURISDICTION

The appellee State of Wisconsin agrees that this case is an appeal within the meaning of 28 U.S.C. § 1257(2).

QUESTION PRESENTED

The State disagrees with the appellants' statement of the question presented.

The question presented is whether the State may, consistent with its long-established constitutional power to regulate the integrity of the electoral process, choose to enable Democratic voters in a presidential primary election to select their party privately and without a public declaration of party loyalty.

The State cannot agree with the appellants' proposed statement of the second question. Appellants, hereafter collectively the "National Party," state the second question to be whether the State can prevent the National Party from determining the qualifications and eligibility of delegates to the national convention.

The reason this second issue is not presented is that the "Wisconsin statute explicitly states that '[t]he method of selecting the delegates or alternates shall be determined by the state party organization.' Sec. 8.12(3) (b), Stats." *State ex rel. La Follette v. Democratic Party,* 93 Wis. 2d 473, 485, 287 N.W.2d 519, 523 (1980) (A-Ap. 6a.) The Wisconsin law "does not govern the selection or qualification of delegates to the national convention." 93 Wis. 2d at 525, 287 N.W.2d at 542. (A-Ap. 41a.) Indeed, the parties stipulated that delegate selection "is under the control and direction" of the Democratic Party of Wisconsin, hereafter the "State Party." 'Stip., par. 19; A-Apee. 9b.)

STATEMENT OF THE CASE

Wisconsin law does not permit any voter to vote in the Democratic primary without regard to party affiliation. Rather, the State Legislature intended that "voters should vote only on the ballot of the party they claim as theirs and that they will not vote on the ballot of a party with which they do not identify." 93 Wis. 2d at 504, 287 N.W.2d at 532. (A-Ap. 23a.)

What characterizes the Wisconsin system as an "open" primary is that the "voter is not required to declare publicly a party preference or to have that preference publicly recorded. Each voter makes a choice of party in the privacy of the voting booth." 93 Wis. 2d at 485, 287 N.W.2d at 523. (A-Ap. 6a.)

The Wisconsin voter votes for candidates, not delegates. The State Party chooses the delegates after the primary. The sole function of the primary is to apportion the number of delegates among the Party's candidates in accord with the results of the primary. 93 Wis. 2d at 485-86, 287 N.W.2d at 523-24. (A-Ap. 6a-7a.)

The National Party's Rule 2A provides that "Democratic voters only who publicly declare their party preference and have that preference publicly recorded" may participate in the "delegate selection process." (Appellants' Jur. Statement, p. 4; A-Ap. 8a.) In July 1979 the Compliance Review Commission (CRC) of the National Party rejected the delegate selection plan of the Democratic Party of Wisconsin because "participation in the April 1, 1980 Wisconsin presidential preference primary is not restricted to Democratic voters who publicly declare their party preference and have that preference publicly recorded," and the State Party had presented no alternative. (Stip., par. 14; A-Apee. 7b; 93 Wis. 2d at 489, 287 N.W.2d at 525, A-Ap. 10a.)

Under National Party rules, no Wisconsin delegation will be seated at the national convention unless in compliance with Rule 2A. (Stip., pars. 11, 17; A-Apee. 6b, 8b.)

The State commenced this action as an original action before the Wisconsin Supreme Court. The State named both the National Party and the State Party as respondents. The State Party responded by agreeing that State law validly may be applied against it and the National Party. The State Party cross-claimed against the National Party, asking the court to order the National Party to recognize its delegation selected in accord with Wisconsin law. The National Party defended on the ground that the Wisconsin law offends the first and fourteenth amendments to the United States Constitution.

The Wisconsin Supreme Court, after receiving briefs, hearing oral argument, and reviewing the parties' stipulated facts, entered its decision and judgment on January 19, 1980. It concluded that the National Party had failed to show that its requirement of a public declaration of Party affiliation served to keep nonDemocrats from participating in the Democratic primary. "Both the closed and open primary depend on the honesty and integrity of the voters." 93 Wis. 2d at 510, 287 N.W.2d at 535. (A-Ap. 27a-28a.) The National Party's own evidence showed there are no differences in results or representativeness in open as opposed to closed primaries. 93 Wis. 2d at 507-08, 287 N.W.2d at 534. (A-Ap. 25a-26a.) Since the required public declaration of Party loyalty only deters voting, the court concluded the essential difference between Wisconsin's open primary and a closed primary is that in the former more people vote on the ballot of their party, not that more nonDemocrats vote on the Democratic ballot. 93 Wis. 2d at 511-12, 287 N.W.2d at 535-36. (A-Ap. 29a.)

As a result, the court concluded that the open primary law, by granting voters a right of privacy in party selection, does not impose a substantial burden on the associational rights of the National Party, and that any burden "appears speculative, remote and minimal." 93 Wis. 2d at 511, 287 N.W.2d at 536. (A-Ap. 29a.)

The court also found that the State has a compelling interest in maintaining its open primary even if there were a substantial burden on the National Party's associational freedoms. The State's interest, the court said, is to preserve the overall integrity of the electoral process by providing secrecy of the ballot, thereby encouraging increased voter participation and ensuring that the primary itself and the political party's participating in the primary are conducted in a fair and orderly manner. 93 Wis. 2d at 512, 287 N.W.2d at 536 (A-Ap. 30a.) The interest of privacy of the ballot is "'fundamental in a free society.'" 93 Wis. 2d at 512, 287 N.W.2d at 536. (A-Ap. 30a.) Voting is encouraged, which in turn fosters democratic government. 93 Wis. 2d at 512-13, 287 N.W.2d at 536. (A-Ap. 31a.) Further, a public declaration would interfere with the State's entire electoral system which is based on secrecy of the ballot and nondisclosure of party preference in the case of hundreds of partisan and nonpartisan offices in the state. 93 Wis. 2d at 513-14, 287 N.W.2d at 537. (A-Ap. 31a-32a.) And the open primary is deeply engrained in Wisconsin's traditions and culture: for almost the whole of the 20th century it has "functioned well in the state of Wisconsin for the citizens and for the political parties." 93 Wis. 2d at 514, 287 N.W.2d at 537 (A-Ap. 32a.)

Having concluded that the open primary law is constitutional, the court turned to a remedy. Unlike the situation in *Cousins v. Wigoda,* 419 U.S. 477 (1975), the

"Attorney General and the State Party ... are not arguing that the National Party must seat any delegates selected by the State Party in accordance with Wisconsin law." Rather, they sought an order that the National Party "cannot refuse to seat the Wisconsin delegation on the sole ground that the delegation was apportioned by utilizing the results of a primary in which no public declaration of party preference was required." 93 Wis. 2d at 522, 287 N.W. 2d at 541. (A-Ap. 38a-39a.) The court entered judgment accordingly. 93 Wis. 2d at 525-26, 287 N.W.2d at 543. (A-Ap. 42a.)

ARGUMENT

This Case Does Not Present A Substantial Federal Question

A. The State law does not interfere with private associational freedoms

The State law permits voters in a presidential primary to select their candidate and party privately. Thus, it operates on the Party only in respect to its public function in the process of selecting a President.

Accordingly, this case is wholly unlike the private associational freedoms at stake in *Cousins v. Wigoda,* 419 U.S. 477 (1975). That case concerned the Party's interest in resolving " 'intra-party disputes' " as to which slate of delegates should be seated. 419 U.S. at 491. This Court said "Illinois' interest in protecting the integrity of its electoral process cannot be deemed compelling in the context of the selection of delegates to the National Party Convention." *Id.*

Here, the State Party, not the State, selects the delegates. 93 Wis. 2d at 485, 525, 287 N.W.2d at 523, 542. (A-Ap. 6a, 41a.)

Cousins v. Wigoda is no broader than protecting the Party's associational right to select delegates. First, this Court said the only question presented there was whether state law had "primacy ... over the National Political Party's rules in the determination of the qualifications and eligibility of delegates to the Party's National Convention." 419 U.S. at 483 and n. 4. Second, *Cousins* has been read only as protecting the Party's rights to set delegate qualifications. *Fallon v. St. Bd. of Elections of the St. of New York,* 408 F. Supp. 636, 638 and n. 3 (S.D. N.Y. 1976). Third, this Court has cited *Cousins* as recognizing the power of a state to significantly interfere with protected rights of political association if it demonstrates a sufficiently important interest and employs narrowly drawn means. *Buckley v. Valeo,* 424 U.S. 1, 24, 25 (1976). And most recently in *Marchioro v. Chaney,* _____ U.S. _____, 99 S.Ct. 2243 (1979), this Court upheld state regulations of political parties in recognition of the "critical role played by political parties in the process of selecting and electing candidates for state and national office," 99 S.Ct. at 2246, distinguishing cases where the state sought to regulate "internal party" matters, *id.* at 2247-48, and distinguishing *Cousins* as involving a "substantial burden on associational freedoms." *Id.* at 2248, n. 15.

In its stipulation here, the National Party agreed that the fact that the delegation selected was bound to certain candidates caused it no concern. (Stip. par. 19; A-Apee. 9b.) Its sole objection is that, in voting for the candidates to which the delegates are bound, the voter need not publicly declare his loyalty to the Party. (Stip. par. 18; A-Apee. 8b-9b.)

Consequently, this case does not involve the internal party matter of selecting the delegates to attend the national convention. Rather, it involves the state right to regulate the public function of picking a

President by granting voters at the primary the right to pick their candidate and party privately and without a public declaration.

B. The state law relates only to the public function of affecting voter rights in the process of choosing a President

The state law concerns only the governmental process of choosing a President by granting to primary voters the right to select their candidate and party privately and without a public declaration.

The National Party, because it is so integral a part of the process of choosing a President, is not merely a private club. This Court has upheld state election laws which "recognize the critical role played by political parties in the process of selecting and electing candidates for state and national office." *Marchioro v. Chaney*, _____ U.S. _____ 99 S.Ct. 2243, 2246 (1979).

The reason this Court has acknowledged state power to impose even "substantial restriction on the right to vote or to associate" is that "under our Constitution ... the States are given the initial task of determining the qualifications of voters," and this power relates as well to the "selection and qualification of candidates." *Storer v. Brown*, 415 U.S. 724, 729-30 (1974). This power is especially strong in respect to the Presidency, for the electoral college established by U.S. Const. art. II, sec. 1, enables each state to "appoint, in such manner as the legislature thereof may direct, a number of electors" who choose the President. The State's authority under this grant of power is "extensive." *Williams v. Rhodes*, 393 U.S. 23, 29 (1968).

The State's power to determine the qualifications of voters and regulate the conduct of elections is well established. *Marchioro v. Chaney,* ——— U.S. ———, 99 S.Ct. 2243, 2246 (1979); *Storer v. Brown,* 415 U.S. 724, 729-30 (1974); *Kusper v. Pontikes,* 414 U.S. 51, 57 (1973); *Rosario v. Rockefeller,* 410 U.S. 752 (1973), *reh. denied,* 411 U.S. 959 (1973); *Bullock v. Carter,* 405 U.S. 134, 141 (1972); *Gray v. Sanders,* 372 U.S. 368, 379 (1963); *United States v. Classic,* 313 U.S. 299, 311 (1941); *Mason v. Missouri ex rel. McCaffery,* 179 U.S. 328 (1900); *In re Green,* 134 U.S. 377 (1890); *McPherson v. Blacker,* 146 U.S. 1, 28, 35-36, 39 (1892). *Also see Cousins v. Wigoda,* 419 U.S. 477, 495-96 (1975) (concurring opinion).

The states' power is no less extensive in a presidential primary. "As a practical matter, the ultimate choice of the mass of voters is predetermined when the nominations have been made." *Newberry v. United States,* 256 U.S. 232, 286 (1921) (Mr. Justice Pitney, dissenting). The primary is not merely a "warm-up" but is an "integral part of the entire election process." *Storer v. Brown,* 415 U.S. 724, 735 (1974). Indeed, this Court has found that the racially discriminatory action of the political parties in the conduct of primaries to be state action because of the effect on who ultimately would govern. *White Primary Cases: Terry v. Adams,* 345 U.S. 461 (1953), *reh. denied,* 345 U.S. 1003 (1953); *Smith v. Allwright,* 321 U.S. 649 (1944); and *Nixon v. Condon,* 286 U.S. 73 (1932).

As a result, this Court has recognized the power of the states to regulate voting rights in a primary as well as the rights of primary voters to be protected against undue state regulation. *Rosario v. Rockefeller,* 410 U.S. 752 (1973), *reh. denied,* 411 U.S. 959 (1973); *Kusper v. Pontikes,* 414 U.S. 51 (1973). These voting rights are "fundamental" because "preservative of all

rights." *Yick Wo v. Hopkins,* 118 U.S. 356, 370 (1886), and no right is "more precious." *Reynolds v. Sims,* 377 U.S. 533, 562 (1964).

On the basis of this authority, the Wisconsin court correctly described the State's legitimate and compelling interest, 93 Wis. 2d at 512, 287 N.W.2d at 536 (A-Ap. 30a):

> The state's interest in maintaining a primary and in not restricting voting in the presidential preference primary to those who publicly declare and record their party preference is to preserve the overall integrity of the electoral process by encouraging increased voter participation in the political process and by providing secrecy of the ballot, thereby ensuring that the primary itself and the political party's participation in the primary are conducted in a fair and orderly manner.

C. The Wisconsin law imposes no substantial burden on the National Party

The State, by granting voters a right to choose their candidate and party privately so as to encourage voter participation, imposes no substantial burden on the National Party.

The Wisconsin court said that, even if the National Party has an associational right to have only Democratic voters participate in a Democratic presidential primary, it nevertheless had failed to meet its burden of showing that the Wisconsin law impaired that interest. 93 Wis. 2d at 497-99, 287 N.W.2d at 529-30. (A-Ap. 17a-18a.)

The Party's goal is to provide "easy access and frequent opportunity for unaffiliated voters to become

Democrats." *Mandate for Reform,* C-3, p. 47; ex. 2. As a consequence of the ease in becoming a Democrat, the decision is wholly subjective: no tests or criteria are imposed. The court correctly deduced, then, that a public declaration that one is a Democrat means that at the time of voting the voter is not an adherent of or loyal to another party but supports the Democratic party, its candidates, and issues. 93 Wis. 2d at 502-03, 287 N.W.2d at 531-32. (A-Ap. 21a.)

Nothing in the State law interferes with the Party's goal of having only Democrats participate or of easing the access of unaffiliated voters by having the voter self-determine his party affiliation. Indeed, state law encourages voters to vote only in the party primary with which they affiliate. A split ballot is not permitted: the voter may vote in the primary of only one party. To cross over into another primary, the voter must sacrifice participation in his own party's primary. Further, the voter dissatisfied with the named candidates need not cross over to express himself; he may write in another name or vote for none-of-the-names-shown, thereby asking for an uninstructed delegation. 93 Wis. 2d at 504-05, 287 N.W.2d at 532-33. (A-Ap. 23a.)

Moreover, the publicly recorded loyalty oath does not keep out nonDemocrats more effectively than the open primary. In closed primary states, the independent voter simply signs up as a party loyalist. Hedlund, *Cross-Over Voting in a 1976 Open Presidential Primary,* 41 Public Opinion Quarterly 498, 501, 504 (1977-78). Since you are a Democrat if you say you are, "[o]ne can only conclude that the so-called 'closed' primaries are just a hair more closed than the so-called 'open' primaries." Ranney, *Curing the Mischiefs of Faction* 166-67 (1975).

The loyalty oath functions only to deter voting. Voters either do not understand the significance of a

public declaration, believe they are barred for not paying dues, or " 'resent being prohibited from voting if they refuse to make a party declaration and having their affiliation a matter of public record for fear of losing their jobs or risking other penalties.' " 93 Wis. 2d at 510, 287 N.W.2d at 535. (A-Ap. 29a.) (Footnote omitted.)

Nor is there any evidence crossovers alter election results. Republicans who cross over into the Democratic primary are so few in number as to have a negligible impact on outcome. Hedlund, *Cross-Over Voting in a 1976 Open Presidential Primary,* 41 Public Opinion Quarterly 498, 503, 513 (1977-78). Those who do cross over are not hostile: in 1968 they did not vote for McCarthy "because they thought he would be the easiest Democrat for Nixon to beat in November; they did so because they liked him and his opposition to the Vietnam war." Ranney, *Turnout and Representation in Presidential Primary Elections,* 66 American Political Science Review, 21, 35 (1972). Closing a primary will not alter the impact from the independent vote since they would participate anyway. Hedlund, *Cross-Over Voting in a 1976 Open Presidential Primary,* 41 Public Opinion Quarterly, 498, 504, 513 (1977-78).

The National Party's own studies show an open primary does not alter results. In a study of all primaries, even those closed primaries the National Party accepts, the conclusion was the general electorate "is as unrepresentative of Democratic Party identifiers as previous primary electorates." Winograd, *Openness, Participation and Party Building: Reforms for a Stronger Democratic Party,* p. 14 (1978); ex. 4. Further, in those primaries the participants "did not produce an outcome significantly different from that which would have occurred with a more representative primary electorate." *Id.* at 14-15. *See* Comment, *State Action in Presidential Candidate Selection,* 1976 Wis. L. Rev. 1269, 1301-02, n. 206.

Accordingly, on the record, the court drew the only reasonable inference: Wisconsin's grant of a privacy right in party selection only increases voter participation and imposes no substantial burden on the National Party. "Indeed any burden appears speculative, remote and minimal." 93 Wis. 2d at 511, 287 N.W.2d at 536. (A-Ap. 29a.)

D. The State's interest is compelling

The Wisconsin court described the State's interest as follows, 93 Wis. 2d at 512, 287 N.W.2d at 536 (A-Ap. 30a.):

> The state's interest in maintaining a primary and in not restricting voting in the presidential preference primary to those who publicly declare and record their party preference is to preserve the overall integrity of the electoral process by encouraging increased voter participation in the political process and by providing secrecy of the ballot, thereby ensuring that the primary itself and the political party's participation in the primary are conducted in a fair and orderly manner.

The public declaration of party loyalty can only interfere with the objective of increased voter participation. With the rising number of independent voters, the State could choose to induce their participation in the democratic process through guaranteed privacy in party affiliation when voting.

The State law also serves the objective of easing the way for voters to exercise their own associational freedoms in identifying with parties and candidates. And the privacy of the voting booth is "fundamental in a free society," being "one of the great political reforms." *Buckley v. Valeo,* 424 U.S. 1, 237 (1976) (Burger, C.J., concurring).

Finally, the open primary is deeply woven into the fabric of Wisconsin's electoral processes and its political institutions and culture. Hundreds of partisan and nonpartisan elections are held under the open primary system. For virtually the whole of this century, the commitment to the open primary has stimulated popular political participation to end boss rule, corruption, and fraudulent practices of parties. 93 Wis. 2d at 490, 492, 514, 287 N.W.2d at 526, 527, 537, and n. 14. (A-Ap. 10a, 12a, 31a-32a.) It has "functioned well ... for the citizens and for the political parties." 93 Wis. 2d at 514, 287 N.W.2d at 537. (A-Ap. 32a).

In granting voters a right to associate with a party privately in the voting booth, the State has taken care not to interfere with the Party's protected freedoms. The State Party determines the method for selecting delegates. Voting by nonDemocrats is discouraged by permitting a vote only on one party's ballot and providing the alternatives of write-ins or none-of-the-above. Privacy stimulates voter participation and the exercise of free choice in party identification. A full participatory democracy results, as does the effectiveness of elected officials to govern.

The consequence is to preserve the integrity of the electoral process without any significant interference with Party interests.

CONCLUSION

Appellee State of Wisconsin respectfully submits that the question upon which this cause depends is so unsubstantial as not to need further argument, and the State respectfully moves the Court to dismiss this appeal, or, in the alternative, to affirm the judgment of the Wisconsin Supreme Court.

Respectfully submitted,

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APPENDIX

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STIPULATION OF FACTS 1b

STATE OF WISCONSIN

IN SUPREME COURT

STATE OF WISCONSIN ex rel.
BRONSON C. LA FOLLETTE,
Petitioner,

v. Case No. 79-1328-OA

DEMOCRATIC PARTY, etc.,
et al.,
Respondents.

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to this stipulation by their undersigned counsel, as follows:

A. *The Parties.*

1. Petitioner Bronson C. La Follette is the Attorney General of Wisconsin. He brings this action on behalf of the State of Wisconsin, pursuant to the authority of its Governor and on behalf of the citizens of the State of Wisconsin.

2. Respondent Democratic Party of the United States of America (hereafter "National Party") is a voluntary unincorporated association and a national political party whose purposes include: (a) nominating and assisting in the election of Democratic candidates for the offices of President and Vice President of the United States; (b) adopting and promoting statements of policy; (c) assisting state and local Democratic Party organizations in the election of their candidates and the education of their voters; (d) establishing standards and rules of procedure to afford all members of the Democratic Party full, timely, and equal opportunities to participate in decisions concerning the selection of candidates, the formulation of policy, and

the conduct of other party affairs, without prejudice on the basis of sex, race, age (if of voting age), religion, economic status, or ethnic origin, and, further, to promote fair campaign practices and the fair adjudication of disputes; and (e) working with Democratic public officials at all levels to achieve the objectives of the National Party.

3. Respondent Democratic National Committee (hereafter "DNC") has general responsibility for the affairs of the National Party between National Conventions, subject to the provisions of the Party's Charter and resolutions or other actions of the National Convention. Its responsibilities include issuing the Call to the National Convention, which establishes the delegate selection rules for the National Convention.

4. Respondent Democratic Party of Wisconsin (hereinafter "State Party") is a Wisconsin voluntary, unincorporated association organized as a political party to promote and preserve liberal, democratic government. To achieve these goals, the State Party promotes and supports candidates who are committed to the principles and objectives of the State and National Parties; conducts caucusses, meetings and a state convention; formulates policy; and promotes the full participation in its affairs without prejudice on the basis of sex, race, age, religion, economic status, or ethnic origin. The State Party is associated with the National Party and elects the Wisconsin members of the DNC.

B. *The National Party's Delegate Selection Rules.*

5. Article Two, Section 4 of the Charter of the Democratic Party of the United States ("Charter"), adopted in December, 1974, provides that:

The National Convention shall be composed of delegates who are chosen through processes which (i) assure all Democratic voters full, timely and equal opportunity to participate and include affirmative action programs toward that end, (ii) assure that delegations fairly reflect the division of preferences expressed by those who participate in the Presidential nominating process, (iii) exclude the use of the unit rule at any level, (iv) do not deny participation for failure to pay a cost, fee or poll tax, (v) restrict participation to Democrats only, and (vi) begin within the calendar year of the Convention.

6. The DNC adopted the Delegate Selection Rules for the 1980 Convention ("Rules") on June 9, 1978.

7. Rule 2 provides:

PARTICIPATION

A. Participation in the delegate selection process in primaries or caucuses shall be restricted to Democratic voters only who publicly declare their party preference and have that preference publicly recorded. Documentary evidence of a process which complies with this rule shall accompany all state Delegate Selection Plans upon their submission to the National Party. Such rules, when approved by the Compliance Review Commission and implemented shall constitute adequate provisions within the meaning of Section 9 of the 1972 Democratic National Convention mandate.

B. A Rule 20 exemption shall not be granted from Rule 2A requirements.

C. A State Party which is precluded by state statute from complying with this rule, shall adopt and implement an alternative party-run delegate selection system which complies with this rule.

D. State Parties shall take all feasible steps to encourage non-affiliated and new voters to register or enroll as Democrats and to provide simple, easy procedures through which they may do so.

E. No person shall be excluded from any stage of the delegate selection process for failure to pay a cost or fee.

8. Rule 12 provides in part:

FAIR REFLECTION OF PRESIDENTIAL PREFERENCES

A. The Call for the 1980 Democratic National Convention shall include provisions that assure that the delegates to the 1980 Democratic National Convention be chosen in a manner which fairly reflects the division of preferences by those who participate in the presidential nominating process in each state, territory and the District of Columbia.

B. At all stages of the delegate selection process, delegates shall be allocated in a fashion that fairly reflects the expressed presidential preference or uncommitted status of the primary voters or if there is no binding primary, the convention and caucus participants, except that

preferences securing less than the applicable percentage of votes cast for the delegates to the National Convention shall not be awarded any delegates. ... The CRC shall adopt regulations to prevent winner-take-all outcomes at the Congressional District or other smaller delegate selection unit. The CRC shall adopt regulations to govern the allocation of delegates in instances where no candidate reaches the applicable percentage.

C. At the level at which the National Convention delegates are selected, delegate selection systems which permit a plurality of votes to elect all of the delegates from that level shall not be used. Under no circumstances shall the use of single member delegate districts be permitted. State Democratic Parties shall ensure that District lines are not gerrymandered in order to discriminate against blacks or any other racial or ethnic minority. For purposes of these rules, plurality is defined as the most votes received by a candidate, whether or not that vote was the majority of the votes cast.

D. For the purpose of fairly reflecting the division of preferences, the non-binding advisory presidential preference portion of primaries shall not be considered a step in the delegate selection process.

9. Rule 20 provides:

STATE LEGISLATIVE CHANGES

A. Wherever any part of any section contained in these rules conflicts with existing state laws, the State Party shall take provable positive steps to achieve legislative changes to bring the state law into compliance with the provisions of these rules.

B. Provable positive steps shall be taken in a timely fashion and shall include the drafting of corrective legislation; public endorsement by the State Party of such legislation; efforts to educate the public on the need for such legislation; active support for the legislation by the State Party lobbying state legislators, other public officials, Party officials and Party members; and encouraging consideration of the legislation by the appropriate legislative committees and bodies.

C. A State Party may be required to adopt and implement an alternative Party-run delegate selection system which does not conflict with these rules, regardless of any provable positive steps the state may have taken.

10. Pursuant to its authority under Article Three, Section 1 of the Charter, the DNC adopted the Final Call for the 1980 Democratic Convention ("the Call") on May 25, 1979, incorporating the Rules. The Call formally establishes the date of the Convention, the qualifications for delegates, the Convention's procedures, and other rules essential to the conduct of the Convention.

11. The Call provides that "delegates and alternates to the 1980 Democratic National Convention shall be selected in accordance with the Delegate Selection Rules." Compliance with said Rules is a condition the State Party must meet in order to participate in any respect at the national convention.

12. The Rules authorize the Compliance Review Commission ("CRC") to "review Delegate Selection Plans submitted by State Parties and approve or recommend changes in such plans."

13. On May 11, 1979, the Chairman of the State Party transmitted the Wisconsin Delegate Selection Plan for 1980 to the CRC.

14. On July 12, 1979, the CRC reviewed and considered the Wisconsin Delegate Selection Plan. The CRC determined that the Plan did not comply with the Rules because participation in the April 1 Wisconsin primary is not restricted to Democratic voters only who publicly declare their party preference and have that preference publicly recorded, and because the State Party had not adopted and implemented an alternative Party-run delegate selection system.

15. On July 19, 1979, the CRC notified the Chairman of the State Party that it found the Plan did not meet the requirements of the Rules and the Call.

C. *Past methods of delegate selection and changes required by DNC rules.*

16. In 1976 the Wisconsin Open Primary was utilized for the purpose of apportioning the number of delegates to the various candidates for President of the United States according to the percentage of the vote in each congressional district and the state at-large. Those delegates were bound to vote the preferences expressed in the primary. Wisconsin voters did not elect delegates and alternates to the National

convention at the Wisconsin Open Primary. The selection of the actual delegates was conducted at the caucusses attended by persons who publicly declared themselves to be Democrats and in complete compliance with the DNC rules and objectives with respect to the sex, race, age, religion, economic status, and ethnic origin of the delegates and alternates. Thus, in 1976, of the Wisconsin delegates and alternates to the Democratic National Convention, 58 delegates and 36 alternates were chosen at congressional district caucusses conducted by the State Party. Ten delegates and eight alternates were chosen as at-large delegates and alternates by the delegates and alternates chosen at the congressional district caucusses. Under the applicable Rules of the National Party in 1976, it was possible to obtain an exemption from Rule 2 of the DNC Rules which require that "participation in the delegate selection process be restricted to Democratic voters only" who publicly declare their party preference and have that preference publicly recorded. The State Party obtained such an exemption in 1976.

17. On June 9, 1978, the DNC adopted Delegate Selection Rules including Rule 2B, which is quoted in paragraph 7 of this stipulation. Thus, the 1980 Rules preclude obtaining an exemption from Rule 2A. The effect of this change is that a Wisconsin delegation which is apportioned to candidates on the basis of the results of the Wisconsin Open Primary will not be seated. The only Wisconsin delegation which will be seated is one which complies with all of the National Party's Rules including Rule 2A.

18. The essential difference between the process under the Open Primary and the DNC's Delegate Selection Rules concerns who participates in the determination of what proportion of the delegates are allotted to the respective candidates. Under the Open

Primary Law, nominee preference and apportionment is measured by the results of the Open Primary in the spring. Voters can vote in the primary without publicly declaring their party preference. Under the DNC rules, the State Party may determine presidential preference through a primary, at a Convention or in caucusses. The DNC does not mandate which of these systems must be used. However, participation in the process of determining preference as to the Democratic nominee must be limited to Democratic voters only who publicly declare their party preference and have that preference publicly recorded. If the State does not change its law so that only voters who publicly declare Democratic party preference and have that preference publicly recorded may participate in the binding Democratic primary, then the State Party must adopt and implement an alternative Party-run system which complies with the Rules.

19. Under *both* the Open Primary Law and the alternative caucus plan pursuant to the rules of the DNC: (1) the process for selecting the delegates is under the control and direction of the State Party; (2) only Democrats and those who subscribe to the general progressive principles of the State Party may participate in selecting delegates; and (3) a committed delegation results, *i.e.,* delegates to the National Convention are bound to support a particular candidate.

The parties stipulate to the authenticity of exhibits one through fourteen attached hereto.

(Signatures omitted.)